IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 2836 of 2006

Date of decision: 26.10.2006

Ravi Nandan

..... Petitioner.

Versus

Mohinder Kumar and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Rakesh Gupta, Advocate
for the petitioner.

Mr. Dhiraj Bali,Advocate
for respondent Nos. 1,3,4 and 5.

Mr. Mahavir Sandhu, Advocate
for respondent No.7.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed against the order dated 08.05.2006 vide which the trial Court referred the controversy in the civil suit filed by the petitioner-plaintiff for arbitration before the Commissioner of the Division.

The facts of the case as emerge from the impugned order and the pleadings are that the property being plot No.50 in Scheme Nos. 8 and 9 drawn by Kaithal Improvement Trust, Kaithal was originally allotted to Mohinder Kumar Miglani and others, defendant Nos. 1 to 6 in the suit. It is the case of the plaintiff that the aforementioned defendants transferred their

interest in the property to him. They have received full consideration money and have executed affidavits and receipts etc. In spite of that they are interfering in the peaceful possession and enjoyment of the property of the plaintiff. Accordingly, the plaintiff had filed the suit for restraining them from interfering in his peaceful possession and enjoyment of the property and with a further prayer that the Kaithal Improvement Trust, Kaithal be directed to register the property in the name of the plaintiff.

After being served, defendant nos. 1 to 6 filed an application for referring the matter for Arbitration. According to them when the plot was allotted to them on 01.01.86, the allotment letter contained clause 16 which reads as hereunder:-

> "All disputes and differences arising out of or in any way touching or concerning this allotment whatsoever shall be referred to the sole arbitration of the Commissioner of the Division."

It is their contention that as per said clause, since this is a dispute relating to the said property, the same has to be referred for arbitration to the Commissioner and the civil Court would have no jurisdiction in the matter. Even though the Improvement Trust was impleaded as a party, no such objection was raised by it before the trial Court. On the basis of the application filed by defendant Nos. 1 to 6 the trial Court has referred the matter for Arbitration before the Commissioner of the Division.

Learned counsel for the petitioner contends that in the present suit, the dispute is inter se between him and the original allottee. It is not a

dispute between the allottee on the one hand and the Improvement Trust Kaithal on the other hand. He contends that it is the latter dispute which has to be referable to the Arbitration. Since the dispute in the present case is between the allottee and the subsequent purchaser and has no concerned with the Improvement Trust Clause 16 would not be attracted and the civil court would have jurisdiction to decide the same. On the other hand learned counsel for respondent Nos. 1 to 6 in the petition contends that a reading of clause 16 would show that any and every dispute concerning to the said property would have to be referred to Arbitration in terms of said Clause.

After hearing learned counsel for the parties, I find merit in the contention raised by the counsel for the petitioner. The allotment letter has been issued by the Kaithal Improvement Trust at a time when the Improvement Trust was defunct. As on today the Improvement Trust is in existence. The clause in the said letter would not be attracted in case where there is a dispute between the allottee and a subsequent purchaser. The said clause would be attracted only when the allottee or any other person to whom he may have subsequent alienated the property has a dispute with the Improvement Trust. In the present case since the dispute is between the allottee and the subsequent purchaser clause 16 would not be applicable. The order passed by the trial Court therefore is set aside. The trial Court would proceed with the suit in accordance with law. Parties are directed to appear before the trial Court on 20.11.2006.

October 26, 2006 (P.S. PATWALIA)
dinesh JUDGE